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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Cellini et al.

Application No: 10/686,541

Filed: October 15, 2003

For: SELF-DEFENSE AND SAFETY TOOL



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Atty. Docket No: C-0130.07

Examiner: M. Cartagena

Group Art Unit: 3754

SECOND NOTICE OF APPEAL FROM THE EXAMINER  
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES

MAIL STOP APPEAL BRIEF - PATENTS  
COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicant hereby appeals to the Board of Patent Appeals and Interferences from the decision of the Examiner dated February 12, 2007, rejecting claims 1-20 in the referenced application.

Responsive to Applicant's first Appeal Brief submitted September 12, 2006, the final rejection of the Examiner dated February 10, 2006 was vacated and prosecution of the referenced application reopened. In the Office Action dated February 12, 2007, Applicant was given the option of (1) filing a reply under 37 C.F.R. §1.111 or (2) initiating a new appeal by filing a notice of appeal under 37 C.F.R. §41.31 followed by an appeal brief under 37 C.F.R. §41.37. Applicant elects option (2) and accordingly submits herewith this Second Notice of Appeal and accompanying Second Appeal Brief. Applicant respectfully requests the previously paid notice of appeal fee and appeal brief fee, both of which are sufficient, be applied to the new appeal.

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DATE: 18 April 2007

BY: 

Christopher L. Makay  
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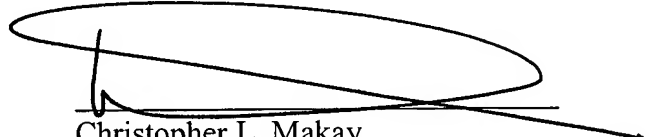
ATTORNEY FOR APPLICANT

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Express Mail No. EV 978321170 US

Date: 18 April 2007

  
Christopher L. Makay



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SECOND APPEAL BRIEF

MAIL STOP APPEAL BRIEF - PATENTS  
COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicant timely presents its Brief on Appeal for the referenced application.

### REAL PARTY IN INTEREST

The real party in interest is LIGHTSTICK PARTNERS, LLC, a Texas limited liability company, whose mailing address is 842 Corinne, #65, San Antonio, Texas 78218.

### RELATED APPEALS AND INTERFERENCES

There are no related appeals and interferences.

### STATUS OF THE CLAIMS

Claims 1-20 remain in the referenced application.

Claims 1-20 stand rejected under 35 U.S.C. §103(a) by Mangels (U.S. Patent No. 3,716,170) in view of Tuscher (U.S. Patent No. 5,941,629).

### STATUS OF AMENDMENTS

Applicant's Amendment After Final Rejection dated May 4, 2006, has been entered into the referenced application. Applicant's Amendment "A" dated November 21, 2005 has been entered into the referenced application.

### SUMMARY OF CLAIMED SUBJECT MATTER

The subject matter of claim 1 consists of a tool 10 utilized for safety and self-defense. The tool 10 includes a body 11 defining a canister compartment 18 and a flashlight compartment 19 (see page 6, lines 7-17, in light of Figure 1). A flashlight head 15 secures to the body 11 at a first end 24 (see page 11, line 9, through page 12, line 4, in light of Figure 1). A switch assembly 14, housed by the body, controls power delivery to the flashlight head 15 from a battery disposed in the flashlight compartment 19 (see page 9, line 22, through page 11, line 8, in light of Figures 1, 8a, and 8b). A nozzle 12 secures to the body 11 at a second end 26 (see page 6, line 18, through page 7, line 5, in light of Figures 1 and 7). A trigger assembly 13 mounts on the body 11 proximate to the switch assembly 14 (see page 7, lines 6-14, in light of Figures 1, 5a-c, and 6).

Actuation of the trigger assembly 13 ejects spray through the nozzle 12 from a spray canister disposed in the canister compartment 18 (see page 8, line 22, through page 9, line 21, in light of Figures 1 and 3). The trigger assembly 13 or the switch assembly 14 may be actuated without changing grip on the body 11 (see page 12, lines 5-22, in light of Figures 1 and 3).

The subject matter of claim 16 consists of a method of self-defense utilizing a tool 10 including a switch assembly 14 (see page 9, line 22, through page 11, line 8, in light of Figures 1, 8a, and 8b) that operates a flashlight head 15 (see page 11, line 9, through page 12, line 4, in light of Figure 1). The tool 10 further includes a trigger 38 located proximate to the switch assembly 14, whereby the trigger 38 engages a spray canister disposed in the tool 10 (see page 7, lines 6-14, in light of Figures 1, 5a-c, and 6). The tool 10 still further includes a nozzle 12 secured to a second end 26 of the tool 10, whereby the spray canister communicates with the nozzle 12 (see page 6, line 18, through page 7, line 5, in light of Figures 1 and 7.) In the method, a user grips the tool 10 with a thumb positioned over the trigger 38. The user then moves the trigger 38 with the thumb from an unfired position to a fired position that ejects spray from the spray canister and through the nozzle 12 (see page 8, line 22, through page 9, line 21, in light of Figures 1 and 3).

#### GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The rejection of claims 1-20 under 35 U.S.C. §103(a) by Mangels (U.S. Patent No. 3,716,170) in view of Tuscher (U.S. Patent No. 5,941,629) is a subject of this Appeal.

## ARGUMENT

### CLAIM 1:

In an Office Action dated February 12, 2007, the Examiner admits Mangels does not disclose a nozzle securable to a body at a second end. The Examiner however asserts Tuscher discloses a spray nozzle 21 located at a second end. The Examiner accordingly combines Mangels and Tuscher and asserts it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the device of Mangels to include a nozzle at a second end.

Applicant respectfully traverses the Examiner's rejection of claim 1 over Mangels in view of Tuscher on two points. First, modification of Mangels in view of Tuscher as suggested by the Examiner violates both M.P.E.P Section 2143.01(V) and M.P.E.P Section 2143.01(VI), and, second, Tuscher in fact does not disclose a nozzle securable to a second end.

Regarding Applicant's first point, M.P.E.P Section 2143.01(V) states, "If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984). Applying M.P.E.P Section 2143.01(V), there can be no suggestion or motivation to locate a nozzle at the end of the rear barrel portion 12 of the Mangels flashlight 10 because placement of a nozzle at the end of the rear barrel portion 12 renders the Mangels flashlight 10 unable to perform according to its intended purpose. Mangels specifically recites in column 3, lines 62-67, "... a special feature of the design, construction, components and operation of the disclosed structure which accomplish other purposes of the flashlight, namely the ejection of a spray or stream of any desired non-lethal chemical, directly through and parallel with the center of the array of light, when desired."

Mangels accordingly specifically discloses that a “special feature” of the design for the flashlight 10 is the ability of the flashlight 10 to eject a spray directly through and parallel with the center of the array of light emitted from the flashlight 10. It is clear that location of a nozzle at the end of the rear barrel portion 12 of the Mangels flashlight 10 renders the flashlight 10 incapable of satisfying the special feature of its design. It is impossible for the flashlight 10 to eject a spray directly through and parallel with the center of the array of light emitted from the flashlight 10 if the nozzle resides at the end opposite from the light array. Applicant therefore respectfully submits that, contrary to the assertion set forth by the Examiner, there is in fact no suggestion or motivation to modify the Mangels flashlight 10 to include a nozzle at a second end because such a modification renders the Mangels flashlight 10 unsatisfactory for its intended purpose of ejecting a spray directly through and parallel with the center of the array of light emitted from the flashlight 10.

Further Regarding Applicant’s first point, M.P.E.P Section 2143.01(VI) states, “If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 U.S.P.Q. 349 (CCPA 1959). Applying M.P.E.P Section 2143.01(VI), the teachings of the Mangels and Tuscher are not sufficient to render claim 1 *prima facie* obvious because placement of a nozzle at the end of the rear barrel portion 12 of the Mangels flashlight 10 requires changing the principle of operation of the Mangels flashlight 10. Mangels specifically recites in column 3, lines 62-67, “... a special feature of the design, construction, components and operation of the disclosed structure which accomplish other purposes of the flashlight, namely the ejection of a spray or stream of any desired non-lethal chemical, directly through and parallel with the center of the array of light,

when desired.” Mangels accordingly specifically discloses that a “special feature” of the design for the flashlight 10 is the ability of the flashlight 10 to eject a spray directly through and parallel with the center of the array of light emitted from the flashlight 10. It is clear that location of a nozzle at the end of the rear barrel portion 12 of the Mangels flashlight 10 requires a change in the operation of the flashlight 10. It is impossible for the flashlight 10 to eject a spray directly through and parallel with the center of the array of light emitted from the flashlight 10 if the nozzle resides at the end opposite from the light array. Applicant therefore respectfully submits that, contrary to the assertion set forth by the Examiner, claim 1 is not *prima facie* obvious over Mangels in view of Tuscher because locating a nozzle at a second end of the Mangels flashlight 10 requires a change in the principle of operation of the Mangels flashlight 10; namely, the ability of the flashlight 10 to eject a spray directly through and parallel with the center of the array of light emitted from the flashlight 10.

Regarding Applicant’s second point, Tuscher discloses a tubular part 12 including a spray opening 19 opposite to an actuating opening 20. In use, a spray can 14 is inserted into the tubular part 12 such that a spray nozzle 21 of the spray can 14 resides adjacent the spray opening 19. A user places the tubular part 12 upright and inserts a finger through the actuating opening 20. The user then depresses an actuating element 22 of the spray can 14 resulting in the ejection of spray from the spray can 14 via the spray nozzle 21 of the spray can 14. The spray leaving the spray nozzle 21 passes through the spray opening 19 on its way to an intended target. Tuscher accordingly does not disclose a nozzle securable to a body at a second end because the spray opening 19 in the tubular body 12 is not in any way a nozzle and the spray nozzle 21 is located on the spray can 14 and thus is not in any way associated with or securable to the tubular body 12. Applicant therefore respectfully submits that Tuscher cannot disclose a nozzle securable to a



body at a second end because Tuscher, in fact, does not disclose any nozzle associated with the tubular part 12.

In view of the foregoing, Applicant respectfully submits claim 1 is not obvious over Mangels in view of Tuscher because the Examiner has made an improper combination of references and Tuscher, in fact, does not disclose a nozzle securable to a second end.

#### CLAIM 2:

Applicant respectfully traverses the rejection of claim 2 by Mangels in view of Tuscher based upon the preceding arguments with respect to claim 1.

#### CLAIM 3:

Applicant respectfully traverses the rejection of claim 3 by Mangels in view of Tuscher. Mangels discloses that a safety locking device 76 resides atop a trigger arrangement 68 and engages a flat raised surface of a barrel portion 12. Mangels accordingly does not disclose a safety aperture and a safety that mounts on a body and extends therein via the safety aperture. Tuscher does not disclose any type of safety. Applicant therefore respectfully submits Mangels in view of Tuscher does not render claim 3 obvious because neither Mangels nor Tuscher disclose the limitation recited therein.

#### CLAIM 4:

Applicant respectfully traverses the rejection of claim 4 by Mangels in view of Tuscher. While Mangels discloses that a safety locking device 76 projects through openings in side walls of a trigger arrangement 68, the safety locking device 76 travels only transversely with respect to trigger arrangement 68. Mangels accordingly does not disclose that depression of a safety disengages the safety from a cavity in a trigger thereby permitting movement of the trigger to a fired position via the aperture. Tuscher does not disclose any type of safety. Applicant therefore

respectfully submits Mangels in view of Tuscher does not render claim 4 obvious because neither Mangels nor Tuscher disclose the limitation recited therein.

CLAIM 5:

Applicant respectfully traverses the rejection of claim 5 by Mangels in view of Tuscher based upon the preceding arguments with respect to claim 1.

CLAIM 6:

Applicant respectfully traverses the rejection of claim 6 by Mangels in view of Tuscher based upon the preceding arguments with respect to claim 1.

CLAIM 7:

Applicant respectfully traverses the rejection of claim 7 over Mangels in view of Tuscher. While Mangels discloses that a safety locking device 76 projects through openings in side walls of a trigger arrangement 68, the safety locking device 76 does not include a biasing member and travels only transversely with respect to trigger arrangement 68. Mangels accordingly does not disclose a biasing mechanism that biases a locking member against a trigger. Tuscher does not disclose any type of safety. Applicant therefore respectfully submits Mangels in view of Tuscher does not render claim 1 obvious because neither Mangels nor Tuscher disclose the limitation recited therein.

CLAIM 8:

Applicant respectfully traverses the rejection of claim 8 by Mangels in view of Tuscher based upon the preceding arguments with respect to claim 1.

CLAIM 9:

Applicant respectfully traverses the rejection of claim 9 by Mangels in view of Tuscher based upon the preceding arguments with respect to claim 1.

CLAIM 10:

Applicant respectfully traverses the rejection of claim 10 by Mangels in view of Tuscher based upon the preceding arguments with respect to claim 1.

CLAIM 11:

Applicant respectfully traverses the rejection of claim 11 by Mangels in view of Tuscher based upon the preceding arguments with respect to claim 1.

CLAIM 12:

Applicant respectfully traverses the rejection of claim 12 by Mangels in view of Tuscher based upon the preceding arguments with respect to claim 1.

CLAIM 13:

Applicant respectfully traverses the rejection of claim 13 by Mangels in view of Tuscher based upon the preceding arguments with respect to claim 1.

CLAIM 14:

Applicant respectfully traverses the rejection of claim 14 by Mangels in view of Tuscher based upon the preceding arguments with respect to claim 1.

CLAIM 15:

Applicant respectfully traverses the rejection of claim 15 by Mangels in view of Tuscher based upon the preceding arguments with respect to claim 1.

CLAIM 16:

In an Office Action dated February 12, 2007, the Examiner admits Mangels does not disclose a nozzle securable to a body at a second end. The Examiner however asserts Tuscher discloses a spray nozzle 21 located at a second end. The Examiner accordingly combines Mangels and Tuscher and asserts it would have been obvious to a person of ordinary skill in the

art at the time the invention was made to modify the device of Mangels to include a nozzle at a second end.

Applicant respectfully traverses the Examiner's rejection of claim 16 over Mangels in view of Tuscher on two points. First, modification of Mangels in view of Tuscher as suggested by the Examiner violates both M.P.E.P Section 2143.01(V) and M.P.E.P Section 2143.01(VI), and, second, Tuscher in fact does not disclose a nozzle securable to a second end.

Regarding Applicant's first point, M.P.E.P Section 2143.01(V) states, "If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984). Applying M.P.E.P Section 2143.01(V), there can be no suggestion or motivation to locate a nozzle at the end of the rear barrel portion 12 of the Mangels flashlight 10 because placement of a nozzle at the end of the rear barrel portion 12 renders the Mangels flashlight 10 unable to perform according to its intended purpose. Mangels specifically recites in column 3, lines 62-67, "... a special feature of the design, construction, components and operation of the disclosed structure which accomplish other purposes of the flashlight, namely the ejection of a spray or stream of any desired non-lethal chemical, directly through and parallel with the center of the array of light, when desired." Mangels accordingly specifically discloses that a "special feature" of the design for the flashlight 10 is the ability of the flashlight 10 to eject a spray directly through and parallel with the center of the array of light emitted from the flashlight 10. It is clear that location of a nozzle at the end of the rear barrel portion 12 of the Mangels flashlight 10 renders the flashlight 10 incapable of satisfying the special feature of its design. It is impossible for the flashlight 10 to eject a spray directly through and parallel with the center of the array of light emitted from the flashlight 10 if

the nozzle resides at the end opposite from the light array. Applicant therefore respectfully submits that, contrary to the assertion set forth by the Examiner, there is in fact no suggestion or motivation to modify the Mangels flashlight 10 to include a nozzle at a second end because such a modification renders the Mangels flashlight 10 unsatisfactory for its intended purpose of ejecting a spray directly through and parallel with the center of the array of light emitted from the flashlight 10.

Further Regarding Applicant's first point, M.P.E.P Section 2143.01(VI) states, "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 U.S.P.Q. 349 (CCPA 1959). Applying M.P.E.P Section 2143.01(VI), the teachings of the Mangels and Tuscher are not sufficient to render claim 16 *prima facie* obvious because placement of a nozzle at the end of the rear barrel portion 12 of the Mangels flashlight 10 requires changing the principle of operation of the Mangels flashlight 10. Mangels specifically recites in column 3, lines 62-67, "... a special feature of the design, construction, components and operation of the disclosed structure which accomplish other purposes of the flashlight, namely the ejection of a spray or stream of any desired non-lethal chemical, directly through and parallel with the center of the array of light, when desired." Mangels accordingly specifically discloses that a "special feature" of the design for the flashlight 10 is the ability of the flashlight 10 to eject a spray directly through and parallel with the center of the array of light emitted from the flashlight 10. It is clear that location of a nozzle at the end of the rear barrel portion 12 of the Mangels flashlight 10 requires a change in the operation of the flashlight 10. It is impossible for the flashlight 10 to eject a spray directly through and parallel with the center of the array of light emitted from the flashlight 10 if the

nozzle resides at the end opposite from the light array. Applicant therefore respectfully submits that, contrary to the assertion set forth by the Examiner, claim 16 is not *prima facie* obvious over Mangels in view of Tuscher because locating a nozzle at a second end of the Mangels flashlight 10 requires a change in the principle of operation of the Mangels flashlight 10; namely, the ability of the flashlight 10 to eject a spray directly through and parallel with the center of the array of light emitted from the flashlight 10.

Regarding Applicant's second point, Tuscher discloses a tubular part 12 including a spray opening 19 opposite to an actuating opening 20. In use, a spray can 14 is inserted into the tubular part 12 such that a spray nozzle 21 of the spray can 14 resides adjacent the spray opening 19. A user places the tubular part 12 upright and inserts a finger through the actuating opening 20. The user then depresses an actuating element 22 of the spray can 14 resulting in the ejection of spray from the spray can 14 via the spray nozzle 21 of the spray can 14. The spray leaving the spray nozzle 21 passes through the spray opening 19 on its way to an intended target. Tuscher accordingly does not disclose a nozzle securable to a body at a second end because the spray opening 19 in the tubular body 12 is not in any way a nozzle and the spray nozzle 21 is located on the spray can 14 and not in any way associated with or securable to the tubular body 12. Applicant therefore respectfully submits that Tuscher cannot disclose a nozzle securable to a body at a second end because Tuscher, in fact, does not disclose any nozzle associated with the tubular part 12.

In view of the foregoing, Applicant respectfully submits claim 16 is not obvious over Mangels in view of Tuscher because the Examiner has made an improper combination of references and Tuscher, in fact, does not disclose a nozzle securable to a second end.

CLAIM 17:

Applicant respectfully traverses the rejection of claim 17 by Mangels in view of Tuscher based upon the preceding arguments with respect to claim 16.

CLAIM 18:

Applicant respectfully traverses the rejection of claim 18 by Mangels in view of Tuscher based upon the preceding arguments with respect to claim 16.

CLAIM 19:

Applicant respectfully traverses the rejection of claim 19 by Mangels in view of Tuscher based upon the preceding arguments with respect to claim 16.

CLAIM 20:

Applicant respectfully traverses the rejection of claim 20 by Mangels in view of Tuscher based upon the preceding arguments with respect to claim 16.

In view of the foregoing, Applicant respectfully requests the Rejection of the Examiner dated February 12, 2007, be reversed.

Respectfully submitted,

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DATE: 18 April 2007

BY: 

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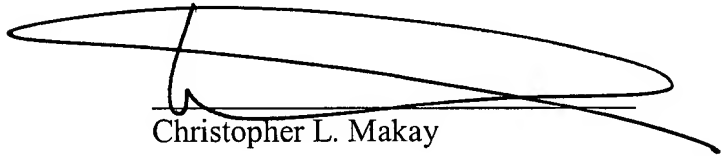
ATTORNEY FOR APPLICANT



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Express Mail No. EV 978321170 US Date: 18 April 2007

  
Christopher L. Makay



## CLAIMS APPENDIX

1. A tool, comprising:
  - a body defining a canister compartment and a flashlight compartment;
  - a flashlight head securable to the body at a first end;
  - a switch assembly housed by the body, wherein the switch assembly controls power delivery to the flashlight head from a battery disposed in the flashlight compartment;
  - a nozzle securable to the body at a second end; and
  - a trigger assembly mounted on the body proximate to the switch assembly, wherein actuation of the trigger assembly ejects spray through the nozzle from a spray canister disposed in the canister compartment, and further wherein either the trigger assembly or the switch assembly may be actuated without changing grip on the body.
2. The tool according to claim 1, wherein the trigger assembly comprises:
  - a trigger movable between an unfired position and a fired position that ejects spray through the nozzle from a spray canister disposed in the canister compartment; and
  - a safety coupled with the trigger to lock the trigger in the unfired position, wherein release of the safety unlocks the trigger and permits movement of the trigger to the fired position.
3. The tool according to claim 2, wherein the body includes:
  - a trigger aperture, wherein the trigger mounts on the body and extends therein via the trigger aperture; and
  - a safety aperture, wherein the safety mounts on the body and extends therein via the safety aperture.

4. The tool according to claim 3, wherein the trigger includes an aperture that terminates in a cavity engaged by the safety, wherein depression of the safety disengages the safety from the cavity and permits movement of the trigger to the fired position via the aperture.
  5. The tool according to claim 3, wherein the trigger, comprises:
    - an engaging member disposed through the trigger aperture; and
    - an activation member mounted on the body and coupled with the engaging member.
  6. The tool according to claim 2, wherein the trigger assembly mounts on the body in a location that permits gripping of the body underhanded with the thumb positioned over the safety and the trigger to permit the thumb to release the safety and move the trigger from the unfired position to the fired position.
  7. The tool according to claim 3, wherein the safety comprises:
    - a locking member disposed through the safety aperture; and
    - a biasing mechanism that biases the locking member against the trigger.
  8. The tool according to claim 1, wherein the nozzle includes a passageway therethrough.
- Claim 9 (original): The tool according to claim 8, wherein the nozzle includes a cavity communicating with the passageway, whereby the cavity receives a delivery tube of the spray canister therein.
10. The tool according to claim 1, wherein the switch assembly comprises:
    - a switch housing; and
    - a switch disposed in the switch housing and electrically connected to a positive terminal and a negative terminal.
  11. The tool according to claim 10, wherein the body includes a switch aperture.

12. The tool according to claim 11, wherein the switch housing is disposed in the body and the switch protrudes through the switch aperture to permit actuation thereof.
13. The tool according to claim 12, wherein the switch housing provides a fluid tight seal between the flashlight compartment and the canister compartment.
14. The tool according to claim 12, wherein the switch assembly further comprises a switch cap that mounts over the switch aperture.
15. The tool according to claim 1, wherein a user may strike with the tool without changing grip on the body.
16. A method of self-defense, comprising:  
providing a tool comprising:
  - a switch assembly that operates a flashlight head secured to a first end of the tool,
  - a trigger located proximate to the switch assembly, whereby the trigger engages a spray canister disposed in the tool, and
  - a nozzle secured to a second end of the tool, whereby the spray canister communicates with the nozzle;
  - gripping the tool with the thumb positioned over the trigger; and
  - moving the trigger with the thumb from an unfired position to a fired position that ejects spray from the spray canister and through the nozzle.
17. The method of self-defense according to claim 16, further comprising releasing with the thumb a safety engaged with the trigger when the trigger is moved from the unfired to the fired position.
18. The method of self-defense according to claim 16, further comprising moving a safety from a safe position that blocks the trigger to a fire position that unblocks the trigger.

19. The method of self-defense according to claim 16, further comprising actuating the switch assembly with the thumb to deliver power to a flashlight head of the tool without changing grip on the tool.

20. The method of self-defense according to claim 16, further comprising striking with the tool without changing grip on the tool.

## EVIDENCE APPENDIX

None